

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

129

CR-1346-2024 (O&M)
Date of Decision : 04.03.2024

BALWINDER SINGH

.... Petitioner

VERSUS

SANDEEP KUMAR GOYAL

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Jai Bhagwan, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

1. The limited prayer made by the learned counsel for the petitioner in the present case is that the impugned order dated 22.02.2024 (Annexure P-5) passed by the learned Civil Judge (Junior Division), Malerkotla has been passed without any compliance of the provisions of Order 21 Rule 36 CPC.

2. Learned counsel for the petitioner would contend that Order 21 Rule 36 CPC mandates that the Court shall order delivery to be made by fixing a copy of the warrants in some conspicuous place of the property and proclaiming to the occupants by beat of drum or through other customary mode.

3. Heard.

4. In the present case the earlier warrants of possession issued on 20.10.2023 were received back with a report of the Bailiff that the shop in dispute was locked from outside due to which the possession of the shop in dispute could not be delivered to the decree holder. Further the Bailiff sought necessary permission to break open the lock of the shop in dispute for

execution of warrants of possession. In view thereof, the Court directed that it was not possible to deliver the possession of the demised premises to the decree holder without breaking open its lock. Thus, keeping in view the circumstances, the Bailiff was directed to break open the lock. Vide order dated 19.02.2024 (Annexure P-4) passed by the learned Civil Judge (Junior Division), Malerkotla the objections raised by the judgment debtor-petitioner were dismissed and it was observed as under :

"5. Present execution has been filed by the decree holder for possession of the shop in dispute as per judgment and decree dated 31.01.2023. The JD has duly appeared in the said civil suit and the case was decided after considering the evidence of both the parties. Perusal further reveals that vide judgment and decree dated 31.01.2023, defendant/JD was directed to deliver the vacant possession of the shop in dispute to the plaintiff (decree holder in the present execution) along-with the recovery of mesne profit. In the objections it is stated by the JD that procedure in execution application regarding relief of mandatory injunction is governed by provisions of Order 21 Rule 32 CPC, which says that the respondent will file reply to the execution application on which Court will frame issues and will direct the decree holder to prove that JD has an opportunity to obey the decree but JD willfully has not obeyed the same. Till the finding

regarding willful disobedience of decree is not recorded by the Court after framing of issues the warrants of possession cannot be issued in the present execution. However, in the present scenario the defendant/JD is very well aware about the decree of the Court as the civil suit was duly contested by the defendant/JD and the decree was passed in the presence of defendant/JD on 31.01.2023 and till date JD had an opportunity to obey the above said decree by delivering the vacant possession of the shop in dispute to the plaintiff/decreed holder. But till date defendant/JD has not obeyed the decree. It appears that the JD is finding the methods to cause delay in the execution of the decree. Further as per Order 21 Rule 35 CPC, where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged or to such person as he may appoint to receive the delivery on his behalf and if necessary, by removing any person bound by the decree who refuses to vacate the property. It is even stated that the executing court can pass the orders directing its Baliff to execute the warrants even by demolishing the structures if any made by the judgment debtor and to deliver the vacant possession of the disputed property. Further as per report no stay is

received till today in the present case and as per report case INDIGIA/07/2023 titled as Balwinder Singh Vs. Sandeep Kumar Goyal is pending for 10.05.2024 before the Court of Sh. Balwinder Kumar, Ld. Addl. District Judge, Sangrur. However, as there is no stay in the proceedings. Also Hon'ble Punjab & Haryana High Court in case titled as Bishan Dass & ors. Vs. State of Punjab and Anr. CRM-M-15054 of 2023 issued directions to the trial Courts to continue with their proceedings unless there is a stay granted on the said proceedings by any superior Court. Hence if no stay is there, trial Court is to proceed with the case. Hence, the objections are without merits and the same stand dismissed. Let, warrants of possession against the shop in dispute be issued for 14.03.2024.'

Even today the argument raised by the counsel for the petitioner is nothing but a hyper-technicality and yet another endeavour to avoid the delivery of possession to the decree holder. It is not the case of the petitioner that he was not aware of the passing of the decree or the present order.

5. In view of the above, I do not find any merit in the present petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

04.03.2024

Aman Jain

NOTE:

(ALKA SARIN)

JUDGE

*Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO*